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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 430

ARROW TRANSPORTATION COMPANY, a corporation,
O. J. WALLS, d/b/a O. J. WALLS COMPANY,
JOHN D. BAGWELL FARMS AND HATCHERY, INC.,
a corporation,
CITY OF GUNTERSVILLE, ALABAMA,
Petitioners

v.

SOUTHERN RAILWAY COMPANY, a corporation,
LOUISVILLE & NASHVILLE RAILROAD COMPANY,
a corporation,
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,
a corporation,
SEABOARD AIR LINE RAILROAD COMPANY, a corporation,
Respondents

PETITIONERS' MOTION FOR LEAVE TO SUPPLEMENT THEIR PETITION FOR WRIT OF CERTIORARI AND THE CERTIFIED RECORD, AND SUPPLEMENTAL PETITION

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INDEX

	Page
PETITIONERS' MOTION FOR LEAVE TO SUPPLEMENT THEIR PETITION FOR WRIT OF CERTIORARI AND THE CERTIFIED RECORD	1
PETITIONERS' SUPPLEMENTAL PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT	3
OPINION BELOW	4
JURISDICTION	4
QUESTION PRESENTED	4
STATUTE INVOLVED	4
STATEMENT	4
REASONS FOR GRANTING THE WRIT	5
ARGUMENT	6
The Petition should be granted because the Court below erred in its interpretation of Section 15(7) of the Interstate Commerce Act	6
CONCLUSION	9
SUPPLEMENTAL APPENDIX A—Judgment, United States Court of Appeals for the Fifth Circuit	1a
SUPPLEMENTAL APPENDIX B—Opinion, United States Court of Appeals for the Fifth Circuit	2a

CITATIONS

CASES:

Cantlay & Tanzola, Inc. v. *United States*, (S.D. Cal. 1953), 115 F. Supp. 72	5, 8
Pacific Inland Tariff Bureau v. *United States*, (D. C. Ore. 1955), 129 F. Supp. 472	5
Scripps-Howard Radio, Inc. v. *Federal Communications Commission*, 316 U.S. 4 (1941)	8
Texas & P. R. Co. v. *I. C. C.*, 162 U.S. 197 (1896)	7

STATUTES: Page

Interstate Commerce Act, 49 U.S.C., Section 8 8
Interstate Commerce Act, 49 U.S.C., Section 15(7) 5, 7, 8
National Transportation Policy, 49 U.S.C., note preceding Section 1 6
Amendments to Interstate Commerce Act
Feb. 28, 1920, c. 91, 41 Stat. 484 8
Aug. 9, 1935, c. 498, 49 Stat. 543 8
Sept. 18, 1940, c. 722, 54 Stat. 929 8
28 U.S.C., Section 1254(1) 4

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PETITIONERS' MOTION FOR LEAVE TO SUPPLEMENT THEIR PETITION FOR WRIT OF CERTIORARI AND THE CERTIFIED RECORD

Petitioners move the Court for leave to supplement their Petition for Writ of Certiorari and the certified record from the Court below in the manner hereinafter shown and in support thereof state:

1. At the time the original petition was prepared, petitioners were awaiting a decision of the Court of Appeals on the merits of petitioners' appeal from the

District Court. That decision was handed down on September 7, 1962. Petitioners received notice of this action on September 11, 1962, after draft of the original petition was in the hands of the printer. Counsel charged with preparation of the petition did not have access to a copy of the decision until September 12—too late to revise the petition and to supplement the certified record from the Court below and still make seasonable filing of the petition as required by Mr. Justice Black's order of August 17, 1962.

2. The Court of Appeals has decided the essential issue adverse to petitioners and has entered a final order affirming the District Court judgment but staying issuance of a mandate of affirmance until September 28 to afford petitioners an opportunity to seek a Writ of Certiorari from this Court.

3. Supplementing the petition and the record will enable this Court to review the final order of the Court of Appeals and to resolve with finality the essential issue involved.

WHEREFORE, petitioners move the Court for leave to supplement their Petition for Writ of Certiorari in the manner hereinafter shown, and to file the certified supplemental record of the Court of Appeals which is lodged herewith.

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Respondents

PETITIONERS' SUPPLEMENTAL PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a Writ of Certiorari issue to review the decision and judgment of the United States Court of Appeals for the Fifth Circuit affirming judgment of the United States District Court for the Northern District of Alabama, Southern Division, denying petitioners' motion for preliminary injunction.

OPINION BELOW

The judgment of the Court of Appeals is shown in Supplemental Appendix A. The opinion below is shown in Supplemental Appendix B and has not been officially reported.[1] All other opinions below are shown in the original petition.

JURISDICTION

The judgment of the Court of Appeals affirming the District Court was entered on September 7, 1962. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

The question presented is the same as that shown on page 3 of the original petition.

STATUTE INVOLVED

The statute involved is the same as that shown on page 3 and copied in Appendix I of the original petition.

STATEMENT

There have been proceedings in the Court of Appeals since the original petition was prepared. On September 7, that Court handed down its final opinion and judgment on the merits of the appeal from the District Court (Supp. R. 1-13, 14; Supp. App. A, B). It affirmed the judgment of the District Court denying petitioners' motion for a preliminary injunc-

[1] The Appendices to the original petition are referred to as "App." The Appendix to this supplement is referred to as "Supp. App.". The Supplemental Record certified from the Court below is referred to as "Supp. R.".

tion and stayed issuance of mandate of affirmance for 21 days (Supp. R. 1-13, Supp. App. B). Petitioners received the opinion on September 11. On September 13, petitioners filed in the Court of Appeals their supplemental answer to Southern Railway Company's demand that petitioners make a $220,600.00 damage bond (Supp. R. 15). The demand for a higher bond has been set for hearing before a two-judge panel of the Court of Appeals at Montgomery, Alabama, on September 20, 1962.

REASONS FOR GRANTING THE WRIT

The Court of Appeals has construed Section 15(7) of the Interstate Commerce Act (49 U.S.C., Section 15(7), App. 1) as rendering the federal equity courts powerless to enjoin rate reductions *pendente lite* at the end of the seven month period of suspension even though failure to enjoin threatens petitioners with bankruptcy, defeats the National Transportation Policy, and obstructs "the ends of justice" which the District Court found would best be served by such extension (R. 76, App. C).

This Court has never construed the Act as imposing impotence upon the equity court in the narrow situation presented here. The Court of Appeals' interpretation conflicts with *Pacific Inland Tariff Bureau* v. *United States,* (D.C. Ore. 1955), 129 F. Supp. 472, in which the District Court, in an action essentially the same as that presented here, enjoined rate decreases and extended the suspension period from December 8, 1953, until the final reviewable order of the Commission was entered on April 19, 1954. And in *Cantlay & Tanzola, Inc.* v. *United States,* (S.D. Cal. 1953), 115 F. Supp. 72, the court preserved the *status quo* by enjoining rate decreases, thus

extending the suspension period until the Commission could pass upon the competing carriers' petition for reconsideration.

The decision of the Court below, if permitted to stand, will enable carriers to destroy competition, monopolize traffic, and inflict irreparable injury upon shippers and localities by the simple device of publishing rates so destructive, so discriminatory, so controversial and drawing so much opposition that the Commission cannot complete its full hearing and enter a final order within the seven months period. In fact, the more destructive, discriminatory and controversial the proposal—the more it violates the public policy declared by Congress—the better chance it has of becoming effective without administrative or judicial approval. The case at bar amply illustrates that fact.[2]

ARGUMENT

The Petition Should Be Granted Because the Court Below Erred in its Interpretation of Section 15(7) of the Interstate Commerce Act

The broad purposes of the Interstate Commerce Act are stated in the National Transportation Policy:

> ". . . all to the end of developing, coordinating, and preserving a national transportation system by water, highway and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense" (App. I).

The record establishes that if the proposed rates go into effect, Arrow Transportation Company, the

[2] Experience has proved that once a new schedule of rates goes into effect, months and often years elapse before the processes of adjudication and review are completed and an effective order of cancellation entered.

largest common carrier barge line on the Tennessee River, will lose its grain traffic which accounts for 80% of its gross revenues. The rates will force its liquidation or insolvency and require it to surrender its certificate as a common carrier (R. 46). The Court of Appeals has interpreted Section 15(7) as depriving the equity court of jurisdiction to keep the rates from going into effect *pendente lite* after the seven months have elapsed. This interpretation enables the Southern to defeat the purposes of the Act by driving a competing water carrier out of business before the administrative processes can be completed. Such interpretation conflicts with the general rule of statutory construction that statutes are to be construed, if possible, to promote rather than to defeat their purposes. *Texas & P. R. Co.* v. *I.C.C.*, 162 U.S. 197, 218, 219 (1896).

The Court below imputed to Congress an intent to limit the inherent power of the equity court to prevent irreparable injury by maintaining the *status quo pendente lite*.[3] This interpretation conflicts with the general rule that before such intent will be imputed to Congress, that intent must clearly and unmistakably appear.

> "Nowhere does there appear [in the Act] any manifestation of Congressional intent to deprive the district courts of their inherent equity juris-

[3] The Court below stated that unreasonably low, monopolistic rates, if non-discriminatory, were lawful at common law (Supp. R. 8, 9, Supp. App. B). If true, which we doubt, the Court nevertheless ignores the grossly discriminatory feature of the proposed low rates. They will apply from Ohio and Mississippi River ports but not from Tennessee River ports. The enormity of the proposed discrimination against shippers at Guntersville is illustrated by the tables in King's affidavit (R. 50, 51).

> diction to employ the writ of injunction in maintaining the *status quo* pending hearing and determination of an action . . ." *Cantlay & Tanzola, Inc., supra,* p. 83. Accord: *Scripps-Howard Radio, Inc.* v. *Federal Communications Commission,* 316 U.S. 4, 15 (1941).

We find nothing in the Act or in its legislative history which evidences Congressional intent that, if the Commission fails to act within seven months, carriers should be free to pursue their destructive and monopolistic activities without restraint.

The Court below stated that if the court issues a *status quo* injunction, it thereby extends the suspension period and in effect amends Section 15(7). This is hardly accurate. If equity maintains the *status quo* in the narrow situation presented here, the court will simply be filling a void in the statute, i.e., providing essential protection which the Commission is powerless to provide for persons about to be irreparably damaged by unlawful decreases in rates.[4]

The Court below stated that petitioners would have a legal remedy under Section 8 of the Act (49 U.S.C., Section 8), but did not state that this remedy would be *adequate.* The District Court found that petitioners would be without *adequate* legal remedy (R. 81, App. B), and Southern has not sought review of that finding. Suffice to say that an action at law

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[4] The Commission had no minimum rate power in 1910 when the statutory power to suspend rates was originally conferred. The minimum rate power came 10 years later (Feb. 28, 1920, c. 91, 41 Stat. 484). Broad jurisdiction over competing motor carriers came in 1935 (Aug. 9, 1935, c. 498, 49 Stat. 543), and over competing water carriers in 1940 (Sept. 18, 1940, c. 722, 54 Stat. 929), at which time the National Transportation Policy was adopted.

for damages under Section 8 can hardly be regarded as *adequate* to a competing carrier in bankruptcy or insolvency with its certificate surrendered, or to an elevator operator whose customers are gone and whose doors have long since closed, or to a municipality which has lost its major industries because of shocking rate discriminations.

CONCLUSION

For the foregoing reasons, and those stated in the original Petition filed herein, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1961

No. 19,928

ARROW TRANSPORTATION COMPANY, ET AL., *Appellants,*

versus

SOUTHERN RAILWAY COMPANY, ET AL., *Appellees.*

Appeal from the United States District Court for the Northern District of Alabama.

Before RIVES, JONES and GEWIN, Circuit Judges.

Judgment

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Alabama, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause denying the motion for a preliminary injunction be, and it is hereby, affirmed;

It is further ordered and adjudged that the appellants, Arrow Transportation Company, and others, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

Issued: September 7, 1962

SUPPLEMENTAL APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19,928

ARROW TRANSPORTATION COMPANY, ET AL., *Appellants,*

versus

SOUTHERN RAILWAY COMPANY, ET AL., *Appellees.*

Appeal from the United States District Court for the Northern District of Alabama.

(September 7, 1962)

Before RIVES, JONES and GEWIN, Circuit Judges.

RIVES, Circuit Judge: The question for decision is whether a federal district court has jurisdiction to extend by injunction the statutory seven-month period of rate suspension in a proceeding still pending before the Interstate Commerce Commission.

The plaintiffs, appellants, Arrow Transportation Company, et al., seek to enjoin the four defendants, appellee Railroad Companies, from applying to the rail transportation of grain certain railroad tariff schedules published by them and which are currently under investigation by the Interstate Commerce Commission in Docket No. I. & S. 7656, Grain in Multiple Car Shipments—River Crossings to the South. This appeal is from an order of the district court denying the plaintiffs' motion for a preliminary injunction solely on the ground that it had no jurisdiction of the subject matter.

The complaint based federal jurisdiction on diversity of citizenship, 28 U.S.C.A. § 1332; on the existence of a federal question, 28 U.S.C.A. § 1331; and on the Clayton Antitrust Act, 15 U.S.C.A. § 12, et seq., and 28 U.S.C.A. § 1337. The district court found the general jurisdictional averments as to diversity of citizenship and amount in contro-

versy to be true. It further found that during 1961 the defendants published tariff schedules proposing to reduce substantially their rates and charges on the transportation of grain in multiple car shipments from certain Ohio and Mississippi River ports to numerous destinations in the Southeast. Its further findings of fact, conclusions of law and order are expressed so clearly and succinctly that they had best be quoted:

"6. On protest of interested parties, the Interstate Commerce Commission entered an order on August 7, 1961, finding that "There is reason to believe that they [the tariffs] would, if permitted to become effective, result in rates and charges, rules, regulations or practices which would be unjust and unreasonable, in violation of the Interstate Commerce Act, and constitute unfair and destructive competitive practices in contravention of the National Transportation Policy—," and suspending the effectiveness of the proposed tariffs for the maximum statutory period of 7 months pursuant to Section 15(7) of the Interstate Commerce Act, 49 U.S.C. 15(7). The Commission set the investigation hearings to begin in October 1961.

"7. It is admitted by the defendants that the Interstate Commerce Commission hearings scheduled for October 1961 were postponed to January 6, 1962 at Southern Railway Company's request because of its change of counsel and that the railroads agreed to extend the suspension period to July 7, 1962. It is also admitted by the defendants that counsel for the Southern Railway Company became ill during the hearings, that by reason thereof the hearings were interrupted, and that the railroads agreed to extend the suspension period to August 7, 1962. Such delay caused by the Southern Railway Company was compensated by further extension granted by the Southern.

"8. The tariff schedules published by the defendants which are currently under investigation by the Com-

mission in I. & S. Docket 7656 will go into effect at 12:01 A.M. on August 7, 1962 unless the suspension period is extended by the defendants or unless the defendants are enjoined from putting them into effect by a court of competent jurisdiction.

"9. The hearings before the Commission in I. & S. Docket 7656 began on January 6, 1962 and are still in progress. It is agreed by the parties that the Commission will not be able to enter a final order before August 7, 1962.

"10. The plaintiffs are contending before the Commission that the proposed tariff schedules are unjust, unreasonable, discriminatory and destructive and will violate the Interstate Commerce Act and the National Transportation Policy.

"11. Defendants have declined to comply with plaintiffs' requests that they agree to extend the suspension period for another sixty days.

"12. There is grave danger that irreparable injury, loss or damage may be inflicted on plaintiffs if the proposed rates go into effect at 12:01 A.M. on August 7, 1962, for which plaintiffs will have no adequate remedy at law.

"CONCLUSIONS OF LAW

"1. Section 15(7) of the Interstate Commerce Act grants exclusive authority to the Interstate Commerce Commission to suspend proposed railroad rates and limits that authority to a period of seven months from the proposed effective date of the rates unless further extended by consent of the carriers proposing the rates.

"2. Courts are without authority to enjoin or suspend the effectiveness of rates published by common carriers subject to the jurisdiction of the Interstate

Commerce Commission before the entry of a final order by the Commission approving the rates. The only jurisdiction of a Court to enjoin or suspend the effectiveness of proposed common carrier rates arises after a final order of the Interstate Commerce Commission, and this is the authority vested in a specially constituted three-judge district court, upon complaint filed against the United States as a necesary defendant, to review the order of the Commission.

"WHEREFORE, it is hereby ORDERED:

"1. That the motion for a preliminary injunction and a temporary restraining order be and the same is hereby denied.

"2. That the motion of defendant Southern Railway Company that the complaint be dismissed and the same is hereby denied."

Section 6 of the Interstate Commerce Act (49 U.S.C.A. § 6) provides that rates and charges for transportation shall be initiated and published by the carrier and shall not be changed except after thirty days notice to the Commission unless the Commission, in its discretion and for good cause shown, allows changes upon less notice. The section most pertinent to the present appeal is Section 15, paragraph (7):

"*Commission to determine lawfulness of new rates; suspension; refunds.* Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice,

to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after September 18, 1940, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and

decision of such questions preference over all other questions pending before it and decide the same as speedily as possible." 49 U.S.C.A. § 15, par. (7).

The Act seems to us to be a model of clarity. It is of course elementary that the power to prescribe rates to be charged in the future is a legislative function. *Great Northern R. Co.* v. *Merchants Elevator Co.*, 1922, 259 U.S. 285, 291; *Terminal R. Asso.* v. *United States*, 1924, 266 U.S. 17, 30; *Interstate Commerce Commission* v. *Railway Co.*, 1897, 167 U.S. 479, 499; 13 C.J.S. Carriers, § 275(b), pp. 623, 624. Though not so frequently declared in the decisions, it would seem equally clear that the power to suspend or not to suspend rates involves a determination of what the rates shall be during the suspension period, which frequently extends over months and years, and is itself a legislative function. See *Board* v *Great Northern Ry.*, 1930, 281 U.S. 412, 429, 430; 1 Davis, Administrative Law Treatise, § 7.08, p. 442; 9 Am. Jur. Carriers, § 65, p. 472.

The Congress, in its wisdom, has permitted carriers to initiate their own schedule of rates subject to the authority of the Interstate Commerce Commission to determine the lawfulness of such rates. Pending the Commission's hearing for such purpose, it may suspend the operation of the rate schedule "but not for a longer period than seven months beyond the time when it would otherwise go into effect." 49 U.S.C.A. § 15(7). Some irreparable injury appears unavoidable in the process of establishing new rates. If the new rates are ultimately determined to be just, reasonable, and lawful, the carriers and that portion of the public which would benefit from the change in rates have nonetheless suffered irreparable injury during the period of suspension. If the period of suspension has expired and the new rate schedule goes into effect, but is subsequently determined to be unlawful, then competing carriers and that portion of the public which would suffer because of the change in rates has been injured during the period when

the rates were not suspended, and in many cases that injury is irreparable.

In case of increased rates, the Commission may require refunds. Experience has proved that such power to require refunds is itself an inadequate and unsatisfactory remedy, but even that remedy is unavailable in the case of reduced rates.

Prior to the Act carriers were at liberty to establish and maintain even unreasonably low rates provided they were not discriminatory. *Keogh* v. *C. & N.W. Ry. Co.*, 1922, 260 U.S. 156, 161. If cheap rates are monopolistic or in restraint of trade, and are the result of a combination or conspiracy among carriers,[1] the Government has adequate civil and criminal remedies under the Antitrust Act. *Keogh* v. *C. & N.W. Ry. Co., supra.* Section 16 of the Clayton Act, however, clearly stands in the way of private injunctive relief.

> "Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injuction may issue: *Provided*, That nothing contained in sections 12, 13, 14-21, 22-27 of this title shall be construed to entitled any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any

[1] Southern Railway Company has filed an affidavit to the effect that, "There was absolutely no concert of action between Southern and any other railroad in connection with the determination and publication of these rates which subsequently were suspended by the Interstate Commerce Commission and are now being investigated in ICC Docket I. & S. 7656."

> common carrier subject to the provisions of chapters 1 and 8 of Title 49, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission." Title 15, U.S.C.A. § 26.

The Supreme Court has declared:

> "Under that section jurisdiction of the Commission does not delimit the jurisdiction of the federal courts to restrain violations of the Sherman Anti-Trust Act. Compare *United States* v. *Trans-Missouri Freight Ass'n*, 166 U.S. 290; *United States* v. *Joint Traffic Ass'n*, 171 U.S. 505. It affects only the capacity of a private party to maintain a suit to restrain violations. See *General Investment Co.* v. *New York Central R. Co.*, 271 U.S. 228. Its obvious purpose is to preclude any interference by injunction with any business or transactions of interstate carriers of sufficient public significance and importance to be within the jurisdiction of the Commission, except when the suit is brought by the Government itself. . . ."

Central Transfer Co. v. *Terminal R.R. Ass'n*, 1933, 288 U.S. 469, 474, 475.

Section 8 of the Interstate Commerce Act appears to provide that the carriers would be liable in damages to the persons injured if the cheaper rates are ultimately declared unlawful:

> "In case any common carrier subject to the provisions of this chapter shall do, cause to be done, or permit to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this chapter, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case." Title 49, U.S.C.A. § 8.

All of the provisions of the Interstate Commerce Act are required to be administered and enforced with a view to carrying out the National Transportation Policy declared in the Act of September 18, 1940, c. 722, Title I, § 1, 54 Stat. 499:

> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

An unreasonably low rate found to be in violation of the National Transportation Policy would give rise to an action for damages under 49 U.S.C.A. § 8. That such a finding may ultimately be reached after full hearing furnishes no authority to the Courts to extend the statutory seven-month period of rate suspension in the face of the clear mandate of the statute that, "if the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period . . ." [49 U.S.C.A. § 15(7).]

Essentially the Court is asked to declare as to the present case that the seven-month period of suspension provided in the statute is inadequate. If that can be done in this case, there is practically no end to the number of instances in which the courts will be called on to set aside the mandate of the statute. Congress, in its wisdom, has fixed seven months as the maximum period of suspension. It seems clear to us that if the courts extend that period, they are in effect amending the statute and that is a matter beyond their power.

We have given careful consideration to the excellent briefs of counsel on both sides and to those filed by amici curiae. A further discussion of many pertinent authorities would be in order if time were not of the essence. Since, however, this is a case where justice delayed would be justice denied, and we have no doubt of the soundness of our decision, we shall forego any further discussion. Since Southern Railway Company has not appealed, we do not pass on that part of the judgment denying its motion to dismiss. See 7 Moore's Federal Practice, 2nd ed., Sec. 72.05.

To afford the appellants a reasonable time to seek a writ of certiorari from the Supreme Court, it is directed that the mandate of affirmance issue twenty-one days from the date of this decision. See Fifth Circuit Rule 32. If during that period a petition for certiorari has been filed, prompt consideration will be given to any request for a further stay of the mandate. See 28 U.S.C.A. § 2101(f); Supreme Court Rule 18.

The judgment of the district court denying the motion for a preliminary injunction is affirmed.

AFFIRMED.